

Opening Statement
Chairman Michael G. Oxley
Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit
“The Role of FCRA in Employee Background Checks and the Collection of
Medical Information”

Tuesday, June 17, 2003

I am pleased to announce that last Thursday another Federal regulator came out in support of a reauthorization of the national uniform standards of FCRA. Don Powell, Chairman of the FDIC, said he believes it's necessary to make permanent the preemptions in the FCRA to ensure no negative economic impact.

Mr. Powell joins the Treasury Secretary, the Chairman of the Federal Reserve Board, and the Conference of State Bank Supervisors, in support of reauthorizing uniform FCRA standards.

I also just received a report by the independent Congressional Research Service analyzing a critical consumer benefit of the FCRA – increased labor mobility. CRS found that mobility is an important barometer to judge the importance of having a national credit reporting system. No surprise, the U.S. has one of the most mobile societies, with 14.5 percent of the population moving in any given year, and lower income individuals more likely to move than higher income groups. It is our national uniform credit system that makes this mobility possible, and gives us a further competitive edge over the rest of the world.

Throughout modern history, national economies have risen and fallen based in large part on the flexibility and mobility of labor and management. American consumers and workers enjoy unprecedented mobility in part because of our uniform national credit standards.

Today's hearing looks at two particular aspects of uniform standards under FCRA. The first panel will address the use of FCRA in employee background screening. Even before 9-11, Americans had become increasingly concerned about ensuring their safety on the job from individual predators with criminal records. Homicide was the second leading cause of occupational fatalities in 2001, and the recent wave of corporate scandals has highlighted the need to keep out bad actors at all levels of the American workplace. Congress has been calling for expanded background checks for a

number of sensitive jobs, and courts have been imposing more liability on businesses that don't perform adequate background checks.

Unfortunately, an interpretation of FCRA by the Federal Trade Commission known as the "Vail letter" undermines the ability of businesses to protect their employees and consumers. The Vail letter prohibits employers from using outside third parties to investigate employee misconduct unless they first notify the wrongdoer of the precise investigation, get his consent, and ultimately give him a copy of the investigative report. How do you investigate a CEO who's embezzling funds if you have to first get his permission and give him time to cover up his actions? How do you get victims to cooperate with a sexual or racial harassment inquiry if they know their identities won't be protected? You don't, and that's why the FTC's interpretation is problematic.

Ironically, a company can perform an employee investigation without these requirements, but only by doing it internally, without any of the protections of an outside, unbiased and professional third party. The Vail letter is impractical. Subcommittee Chairman Spencer Bachus and I wrote to the FTC last term asking the Commission to change its views, and we support efforts by the Members here today to correct this problem.

On our second panel, we will receive testimony on the use of medical information in the credit granting process, and the interplay between various Federal and State health privacy laws. I share the concerns of many of my colleagues that medical information may require special protections to prevent its improper use or theft and look forward to our witnesses' views on the appropriate balance of national consumer standards on this issue.

I would like again to thank Subcommittee Chairman Mr. Bachus for his leadership on FCRA reauthorization, and the continued bipartisan cooperation of our ranking Subcommittee and full Committee Members Mr. Sanders and Mr. Frank.

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